

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2019-281-S**

IN RE: ) ) Application of Palmetto Utilities, Inc. for ) adjustment of rates and charges for, and ) modification to certain terms and conditions ) <u>related to, the provision of sewer service.</u> )	<b><u>PREFILED DIRECT TESTIMONY</u></b> <b><u>OF</u></b> <b><u>GARY E. WALSH</u></b> <b><u>ON BEHALF OF PALMETTO</u></b> <b><u>UTILITIES, INC.</u></b>
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- 1   **Q.    WOULD YOU PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION?**
- 2    A.    My name is Gary E. Walsh. My business address is 1828 Bull Street, Columbia, South
- 3        Carolina, 29201. I am employed as President of the Walsh Consulting Group, LLC.
- 4
- 5   **Q.    WHAT IS YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE?**
- 6    A.    I received a Bachelor of Science degree in Business Administration (Banking and
- 7        Finance) from the University of South Carolina in 1972. In July 1972 I became
- 8        employed by the Public Service Commission of South Carolina in its Audit
- 9        Department, where I worked until 1984. During my twelve years in the Audit
- 10       Department, I provided expert testimony in rate proceedings before the Commission.
- 11       In July 1984, I was promoted to be the Assistant Director of the Commission's Utilities
- 12       Division, where I directly supervised the Electric, Telephone, Gas, Water and
- 13       Wastewater Departments. Ten years later, I was promoted to be the Commission's
- 14       Deputy Executive Director, in which position I directly supervised the Commission's
- 15       Legal, Research, and Utilities departments. In July 1997, I was promoted to my last
- 16       position at the Commission, which was Executive Director. In that capacity, I
- 17       supervised approximately 80 full-time personal, including attorneys, certified public
- 18       accountants, and registered professional engineers. I retired from the Commission as
- 19       Executive Director on November 1, 2003. While employed by the Commission, I
- 20       attended numerous seminars, workshops, and educational forums sponsored by the
- 21       National Association of Regulatory Utility Commissioners ("NARUC").

1 **Q. WOULD YOU PLEASE DESCRIBE THE REGULATORY CONSULTING WORK YOU HAVE**  
2 **BEEN DOING SINCE YOU RETIRED FROM THE COMMISSION?**

3 A. Yes. In 2003, I formed the Walsh Consulting Group and began working with  
4 jurisdictional utilities on a wide variety of regulatory matters for companies appearing  
5 before the Commission. Since 2003 I have been retained to provide consulting services  
6 for electric, gas, telecommunications, water, and wastewater companies. This work has  
7 consisted of accounting and financial analyses associated with rate relief proceedings  
8 and has included rate design analysis. I have provided expert testimony in several  
9 proceedings before the Commission, including the Palmetto Utilities, Inc., which I will  
10 refer to as the “Company” or “PUI,” rate relief proceeding in Docket No. 2013-42-S.  
11

12 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THIS PROCEEDING?**

13 A. The purpose of my direct testimony is to generally support PUI’s application for rate  
14 relief and specifically address two of the matters I understand to be at issue in this case:  
15 (1) the proper accounting treatment for the \$18 million paid for the City of Columbia  
16 collection facilities approved by the Commission to be acquired in its December 21,  
17 2012 Order Number 2012-260 in Docket No. 2012-273-S and (2) the proper  
18 adjustments to reflect the effect of the Federal Tax Cuts and Jobs Act (“TCJA”) which  
19 became effective on January 1, 2018.  
20

21 **Q. WOULD YOU PLEASE DISCUSS YOUR KNOWLEDGE OR PREVIOUS SPECIFIC**  
22 **EXPERIENCE THAT QUALIFIED YOU TO PROVIDE TESTIMONY ON THESE MATTERS?**

23 A. Yes. My knowledge and experience with regard to these matters arises out of my  
24 employment with the Commission for thirty-one years in the fields of auditing,  
25 accounting, and wastewater utility regulation and my subsequent consulting work on  
26 behalf of public utilities – which are by statutory definition in South Carolina investor  
27 owned utilities -- providing wastewater and other jurisdictional services. When I was  
28 employed with the Commission it became necessary for me to become familiar with  
29 the 1996 NARUC Uniform System of Accounts for Class A Wastewater Utilities,  
30 which I will refer to as the “USOA.”

**ACCOUNTING TREATMENT FOR THE ACQUIRED ASSETS**

**Q. HOW SHOULD THE \$18 MILLION PURCHASE PRICE FOR THE SEWER COLLECTION FACILITIES PURCHASED FROM THE CITY BE ACCOUNTED FOR?**

A. In my opinion, the entire amount is required to be booked as the original cost to the Company under the USOA without any adjustment for depreciation, amortization, or contribution in aid of construction ("CIAC").

**Q. WHAT IS THE BASIS FOR YOUR OPINION IN THIS REGARD?**

A. It begins with the basic instruction for recording an acquired operating unit or system, which is found in USOA Accounting Instruction 18. The first sentence in instruction 18.A requires that "all amounts included in the accounts for utility plant acquired as an operating unit or system, shall be stated at the cost incurred by the person who first devoted the property to utility service." But this portion of Accounting Instruction 18.A does not apply to the assets acquired from the City of Columbia for two reasons. First, the assets acquired from the City were not "an operating unit or system," but only collection facilities which, by themselves, were incapable of operation to provide sewer service. Only by virtue of being connected to the City's transportation lines and its Metro Wastewater Treatment Plant were customers able to be served in the City's former territory. Second, the City is not a "utility" as defined by USOA Definition 40, because it is not a "public utility to which this system of accounts is applicable." To the contrary, the City is *unregulated* and the USOA therefore does not apply to it. As a result, the second sentence of Accounting Instruction 18.A applies to the assets acquired.

**Q. HOW DOES THE SECOND SENTENCE OF ACCOUNTING INSTRUCTION 18.A REQUIRED THAT THE ACQUIRED FACILITIES BE ACCOUNTED FOR?**

A. It requires that "all other utility plant shall be included in the accounts at the cost incurred by the utility except as otherwise provided in the texts of the intangible plant accounts." The word "cost" is defined under this Instruction and Accounting Instruction 9 to be "the amount of money actually paid" for this collection system, which is the \$18 million paid to the City for the assets.

**Q. DO ANY OTHER PROVISIONS OF ACCOUNTING INSTRUCTION 18 APPLY?**

A. No, they do not. Instruction 18.B does not apply because the consideration given for the City's assets was cash. Instruction 18.C does not apply because there was no deferred payment. Instruction 18.D does not apply because there were no CIAC, as defined in Balance Sheet Account 271.A, and because any contributions of money, services or property made with respect to these asserts prior to their sale were not received by a "utility," as defined by Definition 40. (The City is not a utility.) I would note that, in addition to these portions of the basic USOA instruction for accounting for an acquired operating unit or system being inapplicable, the more specific instructions which follow would also not apply.

**Q. TO WHICH "MORE SPECIFIC INSTRUCTIONS" ARE YOU REFERRING?**

A. I am referring to USOA Accounting Instruction 21 regarding the purchase of an operating unit or system, and the instructions contained therein.

**Q. WOULD YOU PLEASE ELABORATE?**

A. Yes. As I have stated, the cost of acquisition in this instance under the second sentence of Accounting Instruction 18.A is mandated to be the purchase price paid for the City's facilities, which was \$18 million. This is the amount required to be charged to Account 104 under Accounting Instruction 21.A. There is no need, under Accounting Instruction 21.B(1), to estimate the "original cost of plant" (defined by Accounting Definition 21) since it was neither an operating unit or system nor devoted to utility service by a utility. Instead it is required to be included under Accounting Instruction 18.A at the known purchase price. Similarly, there is no requirement that accumulated depreciation be charged against the purchase price under Accounting Instruction 21.B(2) because there is no "accounting utility" in this instance. (Again, the City is unregulated and not governed by the USOA and thus the Company was the "purchaser" under that provision.)

And, again, because the City is not a "utility":

(1) there is no nonutility property associated with the City's assets which were acquired as contemplated in Accounting Instruction 21.B(3),

(2) there are no CIAC or accumulated amortization required to be charged against the purchase price under Accounting Instruction 21.B(4-5) as Balance Sheet Account Numbers 271 and 272 (which only applies to contributions received by a utility), and

(3) Accounting Instructions 21.B(1-5) is inapplicable, and thus there is no amount remaining in Account 104 which is required to be closed to Account 114 as a utility plant acquisition adjustment.

I would note, however, that even if a utility plant acquisition adjustment were required, it is my opinion that the full amount should be included in rate base in view of the arms-length nature of the transaction, as well as the substantial benefits to customers resulting from the acquisition, which includes the lower rates described by Mr. Daday in his testimony and the value of spreading costs across a larger customer base.

**Q. DIDN'T PUI ACKNOWLEDGE IN THE SEPTEMBER 2019 ALLOWABLE EX PARTE BRIEFING BEFORE THE COMMISSION THAT CIAC AND REPLACEMENT COST NEW, LESS DEPRECIATION, ARE APPROPRIATE FOR CONSIDERATION IN THIS CASE?**

A. I do not believe so. I attended this briefing and have reviewed the transcript, including the documents submitted by PUI. My understanding is that studies and reports referenced at this briefing were used by PUI in its discussions with ORS regarding this issue after the last rate case, which issue the Commission deferred. PUI stated in its briefing presentation that the figures in these studies and reports were being provided for informational purposes and it had not yet, of course, filed its application. In this Application, PUI has specifically stated that it seeks to include the approximately \$18 million purchase price in rate base. I understand that PUI's President, Mark Daday, will provide PUI's alternative positions on this issue if my analysis is not adopted by the Commission.

**Q. ARE YOU AWARE OF ANY INSTANCES WHERE THE COMMISSION ADDRESSED THE ISSUE OF HOW FACILITIES ACQUIRED BY A PUBLIC UTILITY FROM A MUNICIPALITY OR OTHER GOVERNMENTAL ENTITY SHOULD BE TREATED FOR RATEMAKING PURPOSES?**

1 A. No, I am not. To my knowledge, the purchase of these assets from the City of Columbia  
2 is the first and only such instance of an acquisition of that type in South Carolina.

3  
4 **TAX CUTS AND JOBS ACT**

5 **Q. WHAT IS ORS'S POSITION WITH RESPECT TO THE EFFECT OF THE 2017 FEDERAL TAX**  
6 **CUTS AND JOBS ACT ("TCJA") THAT BECAME EFFECTIVE ON JANUARY 1, 2018?**

7 A. My understanding is that ORS has asserted to the Commission, in both administrative  
8 and rate adjustment dockets involving various jurisdictional utilities, that a "refund"  
9 should be given to customers for that portion of rates collected which included income  
10 taxes at the higher tax rates prevailing prior to the effective date of the TCJA.

11  
12 **Q. WHAT IS YOUR UNDERSTANDING OF PUI'S POSITION IN THIS REGARD?**

13 A. Based upon its filings in Docket Number 2017-381-A, which involves the ORS Petition  
14 for An Order Requiring Utilities to Report the Impact of the TCJA, PUI's position is  
15 that no such refund is required because it (i) constitutes impermissible retroactive  
16 ratemaking, and improper single expense ratemaking, (ii) deprives the Company of due  
17 process of law, (iii) is contrary to the provisions of the South Carolina constitution  
18 regarding taking of private property for private use, and (iv) is contrary to South  
19 Carolina Code Section 58-5-290 as interpreted by the South Carolina Supreme Court.

20  
21 **Q. DO YOU AGREE WITH PUI'S POSITION?**

22 A. I certainly do with respect to the question of whether such a refund constitutes  
23 impermissible retroactive ratemaking. As the Commission is aware, I expressed that  
24 view in my rebuttal testimony in Docket No. 2019-64-WS involving an application for  
25 rate relief by a jurisdictional water and sewer utility. The Commission's order in that  
26 docket did not directly address my opinion in that regard. . Nonetheless, I continue to  
27 believe that my position there, and PUI's position in this case, regarding retroactive  
28 ratemaking is correct. I also agree with PUI that it is improper to consider the  
29 lawfulness of a public utility's rates at a given point in time by reference to a single  
30 expense and without consideration of whether the public utility is earning in excess of  
31 an authorized return or margin.

1     **Q.     WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?**

2     **A.**     Yes. Under the USOA, PUI is entitled to include in rate base the entire \$18 million  
3             spent to acquire the City of Columbia facilities which are now part of PUI system  
4             because the second sentence of Accounting Instruction 18.A governs. No deductions  
5             from the purchase price for depreciation, amortization, or CIAC are appropriate. Nor  
6             is there any requirement that an acquisition adjustment be reflected on PUI's books.  
7             However, should the Commission reject my analysis and determine that the first  
8             sentence of Accounting Instruction 18.A does govern, these facilities may still be  
9             included in rate base at the purchase price based on the adoption of an acquisition  
10            adjustment or accounted for in the alternative manner proposed by Company witness  
11            Daday.

12

13            Further, the TCJA does not warrant the imposition of a refund requirement on PUI as  
14            such would constitute retroactive ratemaking and single expense ratemaking.

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16     **Q.     DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

17     **A.**     Yes, it does.